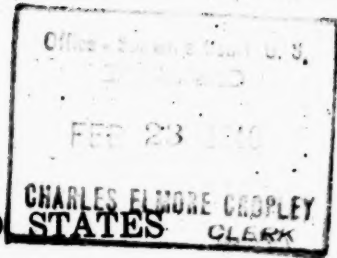


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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939.

No. 563

DELAWARE RIVER JOINT TOLL BRIDGE COMMISSION, PENNSYLVANIA-NEW JERSEY,

Petitioner,

vs.

JOHN D. COLBURN AND BESSIE COLBURN.

**On Writ of Certiorari to the Court of Errors and Appeals
of the State of New Jersey**

BRIEF FOR PETITIONER

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BRIEF FOR PETITIONER.

The petition for the certiorari herein was filed November 30th, 1939, and an order of this Court allowing the certiorari was filed January 15th, 1940, in which the attention of counsel was directed to the jurisdictional question.

**Statement of the Report of the Opinions
Delivered in the Courts Below.**

The opinion below of the New Jersey Supreme Court in the instant case is reported under the title of *Klement et als. v. Delaware River Joint Toll Bridge Commission, Pennsylvania-New Jersey*, 119 N. J. L. 600; 197 Atl. 896, and the opinion below of the New Jersey Court of Errors and Appeals is reported *John D. Colburn and Bessie Colburn v. Delaware River Joint Toll Bridge Commission, Pennsylvania-New Jersey*, 123 N. J. L. 197; 8 Atl. 2d 563.

Statement of the Grounds on which the Jurisdiction of this Court is invoked.

The sole legal question involved in this case is the meaning and application of the 1934 Compact between Pennsylvania and New Jersey for the acquisition, construction and maintenance of bridges across the Delaware River. A copy of the Compact is hereto appended.

The meaning and application of such a compact presents a federal question for ultimate adjudication by this Court.

U. S. Constitution, Art. I, Sec. X (2);

Hinderlider v. La Plata River and Cherry Creek Ditch Co., 304 U. S. 92 (Petition for Rehearing denied, 305 U. S. 668);

Kentucky v. Indiana, 281 U. S. 143;

Pennsylvania v. Wheeling & Belmont Bridge Company, 13 Howard 518;

Green v. Biddle, 8 Wheat. 1.

The construction of the compact between Pennsylvania and New Jersey here under consideration is of necessity a question of federal law, upon which neither the statutes nor the decisions of either State can be conclusive.

Obviously, neither the courts of Pennsylvania nor New Jersey can finally determine questions arising from the construction and interpretation of the compact between the two States.

In *Hinderlider v. La Plata River and Cherry Creek Ditch Co.*, *supra*, this Court said (p. 110):

"For the decision below necessarily rests upon the premise that at the time the compact was made Colorado was absolutely entitled to at least 58¼ cubic feet of water per second, regardless of the amount left for New Mexico. The judgment cannot stand if this de-

termination is erroneous. For whether the water of an interstate stream must be apportioned between the two states is a question of 'federal common law' upon which neither the statutes nor the decisions of either State can be conclusive."

In *Kentucky v. Indiana*, *supra*, this Court said (p. 176):

"It cannot be gainsaid that in a controversy with respect to a contract between states, as to which the original jurisdiction of this court is invoked, this court has the authority and duty to determine for itself all questions that pertain to the obligations of the contract alleged."

In *Pennsylvania v. Wheeling & Belmont Bridge Company*, *supra*, this Court said (p. 566):

"This compact, by the sanction of Congress, has become a law of the Union. What further legislation can be desired for judicial action?"

and further said (p. 566):

"In the case of *Green et al. v. Biddle*, 8 Wheat. 1, this court held that a law of the State of Kentucky, which was in violation of this compact between Virginia and Kentucky, was void; and they say this court has authority to declare a state law unconstitutional, upon the ground of its impairing the obligation of a compact between different states of the Union."

In the instant case it is the New Jersey Statute, as construed by the New Jersey Court of Errors and Appeals, which impairs the obligation of the compact.

Even though the solution of questions of construction of interstate compacts involves the determination of the effect of the local legislation of either State, this Court has the authority and duty to determine for itself all questions pertaining to the compact.

In *Kentucky v. Indiana*, *supra*, this court further said (p. 176):

"The fact that the solution of these questions may involve the determination of the effect of the local legislation of either state, as well as of acts of Congress, which are said to authorize the contract, in no way affects the duty of this court to act as the final, constitutional arbiter in deciding the questions properly presented."

The two States are not necessarily parties to this review. On this point, this Court in *Hinderlider v. La Plata River and Cherry Creek Ditch Co.*, *supra*, said (p. 110):

"It has been suggested that this court lacks jurisdiction to determine the validity and effect of the Compact because Colorado and New Mexico, the parties to it, are not parties to this suit and cannot be made so. The contention is unsound."

The meaning and application of a compact of the kind here under consideration between two states, presents a question of "federal common law" upon which neither the statutes nor the decisions of either state can be conclusive.

This Court in *Hinderlider v. La Plata River and Cherry Creek Ditch Co.*, *supra*, held that the assent to the compact there in question by Congress did not make the matter one of federal statutory law, but left it one of "federal common law."

The assent of Congress to the Compact here involved did not make the matter in controversy one of federal statutory law, but left it one of "federal common law."

The Compact, therefore, is not to be finally construed by the Courts of either New Jersey or Pennsylvania, even though the construction of local statutes authorizing the Compact is involved.

Manifestly, neither the legislative, executive nor judicial branches of the government of either State can make a final determination as to the meaning and application of a compact.

The Compact, therefore, is to be governed not by the statutes or judicial decisions of either State, or by decisions construing federal statutes, but by the "federal common law."

In *Smith v. Alabama*, 124 U. S. 465, this Court said (p. 477):

"There is no common law of the United States, in the sense of a national customary law, distinct from the common law of England as adopted by the several states, each for itself, applied as its local law and subject to such alteration as may be provided by its own statutes. *Wheaton v. Peters*, 33 U. S., 8 Peters 591."

and further said (p. 478):

"There is, however, one clear exception to the statement that there is no national common law. The interpretation of the Constitution of the United States is necessarily influenced by the fact that its provisions are framed in the language of the English Common Law and are to be read in the light of its history. The code of constitutional and statutory construction, which, therefore, is gradually formed by the judgments of this court, in the application of the constitution and the laws and treaties made in pursuance thereof, has for its basis so much of the common law as may be implied in the subject, and constitutes a common law resting on national authority. *Moore v. U. S.*, 91 U. S. 270."

Petitioner as a body corporate and politic, created by the Compact between Pennsylvania and New Jersey, was in duty bound to secure, if possible, a final and conclusive determination by this Court as to the meaning and application of the Compact in respect to claims for damages by

landowners whose real property and street access thereto had not been taken, and whose only claim was for consequential damages by the obstruction of view and limitation of light and air, and the closing of streets incidental to the acquisition of land and the building of a bridge by petitioner, and, therefore, petitioner applied to this Court for a writ of certiorari to review the judgment of the New Jersey Court of Errors and Appeals, which impaired the obligation of the Compact. The only legal question involved in the suit was the construction of the Compact, which was and is a question of "federal common law."

It was conceded by the respondents in their mandamus suit that they had no right to damages unless such right were conferred by the Compact between the two States. The New Jersey Courts below held that the respondents had no right to damages, unless the statutes authorizing the making of the Compact created and gave such right (R. 16).

The New Jersey Statute (P. L. 1934, Ch. 215), upon which the respondents relied and rely, provided that (Sec. 1):

"The Governor is hereby authorized to enter into a compact or agreement on behalf of the State of New Jersey, with the Commonwealth of Pennsylvania in substantially the following form: . . ."

A copy of the 1934 Statute is hereto appended.

The Statute ^{was} ineffective unless Pennsylvania agreed to the proposed compact. In fact, Pennsylvania had previously enacted a similar Statute (Act of June 25th, 1931, No. 332, P. L. 1352, as amended by Act of May 18th, 1933, No. 138, P. L. 1827).

The Compact was signed by the Governor of New Jersey on December 18th, 1934, and by the Governor of Pennsylvania on December 19th, 1934. Congress approved the Compact on August 30th, 1935 (Public No. 411, 74th Congress).

Respondents' rights, if any, rest wholly upon this Compact. The Compact is a contract, and the rule of law is that contracts to which the State is a party should be construed in favor of the State.

Panama-Pacific International Exposition Co. v. Panama-Pacific International Commission, 178 Cal. 746; 174 Pac. 890.

Applying this rule to the instant case, the Compact should be construed in favor of the two States and against a person making a claim under the Compact against the Bridge Commission.

Respondents also relied and rely upon certain provisions of a New Jersey Statute of 1912, as amended in 1919 (P. L. 1912, Ch. 297; P. L. 1919, Ch. 76). A copy of each of these Statutes is hereto appended. The reference in the Compact to the 1912 Act, as amended, is only to provide a method of procedure. The 1912 Act was also ineffective unless Pennsylvania concurred in the proposed joint action. The 1912 Act provided only for the acquisition of existing toll bridges. The Compact entered into, pursuant to the 1934 Act, authorized, among other things, the construction of new bridges.

Respondents had no rights whatsoever under the 1912 Act, as amended, because their claim for alleged damages did not arise from the acquisition of an existing toll bridge, but only from the construction of a new bridge. The respondents' claim, therefore, rests wholly upon the Compact, and particularly upon their contention that the Compact should be construed as creating new and undefined rights to consequential damages for obstruction of view and limitation of light and air, and by the closing of streets incidental to the acquisition of land and the building of the bridge by petitioner.

The question presented, therefore, is a question of "federal common law" for final determination by this Court.

Statement of the Case.

The petitioner is a body corporate and politic created pursuant to a Compact between the State of New Jersey and the Commonwealth of Pennsylvania (R. 15). The petitioner is vested with the power of eminent domain and may acquire real property and interests in real property (R. 16). The term "real property" is defined in the Compact as follows (R. 31):

"The term 'real property,' as used in this compact, includes lands, structures, franchises, and interests in land, including lands under water and riparian rights, and any and all things and rights usually included within the said term, and includes not only fees simple and absolute but also any and all lesser interests, such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments, and every estate, interest or right, legal or equitable, including terms of years and liens thereon by way of judgments, mortgages, or otherwise, and also claims for damage to real estate."

The petitioner acquired lands in the Town of Phillipsburg, New Jersey, by purchase and not by condemnation, and constructed thereon the New Jersey section of a bridge across the Delaware River between Phillipsburg, New Jersey, and Easton, Pennsylvania. The petitioner did not acquire any of respondents' land nor any easement pertaining thereto. Respondents' land abutted on a main highway known as North Main Street in Phillipsburg, and adjoined in the rear thereof lands acquired by the petitioner (R. 192).

To aid petitioner in its project, the Town of Phillipsburg, by ordinance, closed certain streets, partially closed, and relocated other streets, but North Main Street was not closed in whole or in part, nor was it relocated (R. 192).

Respondents alleged that their land had been injured by the construction of the bridge and its approach, which consisted in part of a solid-fill embankment, beginning at grade and reaching a maximum height of thirty-five feet, and by the obstruction of view and limitation of light and air, and by the closing of streets. Respondents, in effect, conceded that their damages, if any, would be *damnum absque injuria* except for the Compact, and made claim for damages based upon the language of the Compact (R. 16).

Petitioner declined to pay damages to respondents, and further declined to institute condemnation proceedings. Respondents obtained from the New Jersey Supreme Court an alternative writ of mandamus (R. 14). Petitioner contested the suit, and the New Jersey Supreme Court entered a final judgment awarding a peremptory writ of mandamus (R. 29). Petitioner appealed to the New Jersey Court of Errors and Appeals and that Court affirmed the judgment awarding the peremptory writ of mandamus (R. 213). The peremptory writ of mandamus commands petitioner to pay respondents, by agreement if possible, an amount equal to the extent to which the value of respondents' property has been diminished by reason of the building of a bridge abutment to the rear of respondents' land, and upon failing to agree in that regard, to institute, prosecute and consummate proceedings for the determination of the amount to be awarded respondents as compensation for their damages, pursuant to the statutes (R. 30).

As above pointed out (p. 6), the New Jersey courts below held that respondents had no right to damages unless the statutes authorizing the making of the Compact created and gave such right, and the sole question here is the construction of the Compact.

Specification of Errors.

1. The Compact in question did not give respondents a right to consequential damages by the closing of streets, by the obstruction of view and limitation of light and air, and by the construction of the abutments and approaches.

2. The New Jersey Act of 1912 (P. L. 1912, Ch. 297), as amended by the Act of 1919 (P. L. 1919, Ch. 76), and referred to in the Compact, provided a specific eminent domain method of acquiring property and did not give respondents a right to consequential damages.

Argument.

Point I.

The compact did not give respondents a right to consequential damages.

The New Jersey Courts below held that respondents have no right to damages unless the Statutes authorizing the making of the Compact give such right (R. 210), and also held that although the New Jersey Constitution does not provide for damages for injury from the construction of public works, the provision of the Pennsylvania Constitution in respect thereto should be read into the Compact (R. 12).

At the time of the making of the Compact the applicable constitutional provisions of Pennsylvania and New Jersey, and the rule of law as stated in the decisions of the Courts, were as follows:

In New Jersey there was and is no constitutional provision for damages for "injury" to property, but there is a provision only for damages for "taking" (Art. I, Sec. 16):

"Private property shall not be taken for public use without just compensation; but land may be taken for public highways as heretofore until the Legislature shall direct compensation to be made."

Under the New Jersey decisions there was no right to light, air and view over other lands, nor in eminent domain proceedings was there any right to an award for consequential damages for obstruction of view, limitation of light and air, or from the closing of streets.

Barnett v. Johnson, 15 N. J. Eq. 481;

Harwood Ads. Tompkins, 24 N. J. L. 425;

Hayden v. Dutcher, 31 N. J. Eq. 217;

Newark v. Hatt, 79 N. J. L. 548;

R. & A. Realty Corporation v. Pennsylvania Railroad Company, 16 N. J. Misc. Repts. 537.

In *Barnett v. Johnson*, *supra*, the New Jersey Court of Errors and Appeals pointed out the distinction between the right of an adjoining landowner to light and air from the highway upon which his lands abut, because of the necessity therefor, and the absence of such right as against privately-owned adjoining lands.

In *Harwood Ads. Tompkins*, *supra*, the New Jersey Supreme Court held that:

"No action lies in this state for obstructing a view, unless founded upon express covenant."

In *Hayden v. Dutcher*, *supra*, the New Jersey Court of Chancery held that:

"An easement of light and air, supplied to the windows of one person from the premises of another, cannot be acquired in this state by a mere user for twenty years under a claim of right."

The Court, after a careful review of the authorities said (p. 221):

"But, in the case of windows overlooking the land of another, the injury, if any, is merely ideal and imaginary. The light and air which they admit are not the subjects of grant, nor of property beyond the moment of actual occupancy. In such a case there is no adverse user, nor, indeed, any use whatever of another's property. No foundation is, therefore, laid for indulging in any presumption against the rightful owner."

and also said (p. 222):

"A judgment pronounced by the court of queen's bench, in 1588, is reported in *Cro. Eliz., Bury v. Pope*, in which it is said that it was agreed by all the justices, that if two men be the owners of two parcels of land adjoining, and one of them doth build a house upon his land and makes windows and lights looking into the other's land, and this house and lights have continued for the space of thirty or forty years, yet the other may, upon his own soil, lawfully erect a house against the other's lights and windows, and he can have no action, for it was his own folly to build his house so near to his neighbor's land; and it was adjudged accordingly. At this date, a user to raise a right by prescription, must have continued 'during time whereof the memory of man runneth not to the contrary,' or from the beginning of the reign of Richard I."

In *Newark v. Hatt*, *supra*, the New Jersey Court of Errors and Appeals said (p. 550):

"The right of the state to destroy public improvements of this class without compensation is not limited by the constitution, and except for the statute, as expressed in the charter of the city, this street could have been vacated without the slightest consideration

of its effect upon any land lying along it, or the payment by the city of compensation to any landowners for damages."

In *R. & A. Realty Corporation v. Pennsylvania Railroad Company, supra*, the Court, after reviewing the authorities, said (p. 542):

"It is settled that the owner of land abutting on a highway has no vested right to recover damages for a change of grade of the highway in the absence of a statute giving that right, and this is so even though the general effect of the change of grade is to impair or substantially destroy access to the landowner's property. It is not a taking of property in the legal sense. It is *damnum absque injuria*." (Citing authorities.)

The Pennsylvania Constitution provides for damages to property "injured" as well as damages for "taking," (Art. 16, Sec. 8):

"Municipal and other corporations and individuals invested with the privilege of taking private property for public use shall make just compensation for *property taken, injured or destroyed by the construction or enlargement of their works*, highways and improvements, which compensation shall be paid before such taking, injury or destruction * * * ." (Italics ours).

The courts of Pennsylvania have held that even under their constitution there could be no recovery by adjoining landowners for consequential damages unless, in addition to the constitutional provision, there was a statute expressly giving a right thereto,

In re Soldiers and Sailors Memorial Bridge, etc., in the City of Harrisburg, 308 Pa. 487;
Hoffer v. Reading Co., 287 Pa. 120;
Westmoreland C. & C. Co. v. Public Service Commission, 294 Pa. 451;

Pennsylvania Railroad Company v. Marchant, 119 Pa. 541, aff. 153 U. S. 380;

Pennsylvania Railroad v. Lippincott, 116 Pa. 472;
Holmes v. Public Service Commission, 79 Pa. Sup. Ct. 381,

and no recovery was ever allowed, unless the structure complained of had been erected in a public street.

In the case of *In re Soldiers and Sailors Memorial Bridge, etc., in the City of Harrisburg*, *supra*, the Supreme Court of Pennsylvania said (p. 491):

"An abutting owner could not recover consequential damages for a change of grade before the Constitution of 1874. *Struthers v. Dunkirk, etc. Ry. Co.*, 87 Pa. 282. The present Constitution makes this possible. *County of Chester v. Brower*, 117 Pa. 647, 12 A. 577, 2 Am. St. Rep. 713; *Appeal of Delaware County*, 119 Pa. 159, 13 A. 62. But before the right may be exercised, the state must authorize it by some statute. *Westmoreland C. & C. Co. v. Public Service Commission*, 294 Pa. 451, 458, 144 A. 407, and authorities there cited. The owner is without remedy unless the Legislature provides one."

and also said (p. 492):

"The title of the act shows no attempt to impose liability for such damage on the state; as the judge of the court below said, such damages were entirely omitted from the title. We have repeatedly held that where an act imposes on counties new burdens, without an intention so to do being clearly indicated in the title of the act in question, the act as it relates to those particular burdens is unconstitutional." (Citing cases.)

In *Heffer v. Reading Co.*, *supra*, the Pennsylvania Supreme Court held that:

"Constitution 1874, Article 16, Section 8, requiring compensation for injuring or destroying property has

no application to occupation of land for public highways or consequential injuries therefrom," and that "change of grade of public road is no basis for recovery of damages by abutting owners against municipality, in absence of statutory liability."

In *Westmoreland C. & C. Co. v. Public Service Commission*, *supra*, the Supreme Court of Pennsylvania said (p. 457):

"The state, to properly exert its regulatory control over public utilities, gave the Public Service Commission a modified but exclusive control over certain dangerous conditions in our highway systems. It may order abolished dangerous crossings over railroads. In all these changes, this court has endeavored to adhere to the fundamental rules laid down early in our history, as a part of governmental policy. As part of that policy, before the Constitution of 1874, an abutting owner could not recover damages for the change of grade. *Struthers v. Dunkirk, etc., Ry. Co.*, 87 Pa. 282, and cases cited. The reasons are well stated in those opinions. In a case similar to the facts now before us, we held our present Constitution gave the right to consequential damages. *Chester County v. Brower*, 117 Pa. 647, 12 A. 577, 2 Am. St. Rep. 713; *Delaware County's Appeal*, 119 Pa. 159, 13 A. 62, even though no statute imposed the liability. In such case, recovery could be had in an action at law classified under old forms of pleading as an action on the case. *Pennsylvania Railroad Co. v. Duncan*, 111 Pa. 352, 5 A. 742; *Chester County v. Brower*, *supra*, page 656 (12 A. 578). We there stated that a county was a municipality within article 16, liable for consequential damages to property injured by change of grade, though the state had not provided a remedy. These cases were in opposition to repeated expressions of the court as to the effect of similar constitutional provisions. Since then, these decisions have been modified, if not set aside. We have returned to our former policy of

placing the right to damages within the grant of the sovereign, and the rule is now well settled that damages for consequential injuries cannot be recovered by a property owner under the present Constitution, unless the Legislature gave that right and imposed such liability on the municipality."

In *Pennsylvania Railroad Company v. Marchant*, *supra*, the Pennsylvania Supreme Court followed its decision in *Pennsylvania Railroad v. Lippincott*, *supra*, and said (p. 557):

"Just here it is proper to say there is not a word about 'consequential' injuries in the Constitution. The word itself has acquired a broad popular meaning by which many persons may be misled. In judicial proceedings it should be used intelligently, and with due regard to its proper meaning."

and also said (p. 561):

"We understand the word 'injuries' or 'injured', as used in the Constitution, to mean such a legal wrong as would be the subject to an action for damages at common law."

and further said (p. 562):

"that they intended to give a remedy merely for legal wrongs, and not for such injuries as were *damnum absque injuria*. Among the latter class of injuries are those which result from the use and enjoyment of a man's own property in a lawful manner, without negligence and without malice. Such injuries have never been actionable since the foundation of the world."

In *Holmes v. Public Service Commission*, *supra*, the Court followed the decisions in *Pennsylvania Railroad v. Lippincott*, *supra*, and *Pennsylvania Railroad Company v. Marchant*, *supra*, and other later cases, and said (p. 390):

"Where the railroad company erects its construction on its own land, even though it may interfere with the light and air of an abutting property owner and cause him inconvenience, it is in the absence of negligence *damnum absque injuria*."

In jurisdictions other than New Jersey and Pennsylvania, even with constitutional provisions similar to those of Pennsylvania and with statutory provisions similar to the language of the Compact in question, injuries of the kind here involved were held to be *damnum absque injuria*. The following are instances of such decisions:

In *Howell v. New York, New Haven and Hartford Railroad Company*, 221 Mass. 169, the Massachusetts Supreme Court, in construing a statute which provided for the payment of damages caused by laying out, making and maintaining a railroad, held:

"The partial cutting off of the view from a dwelling house by the raising to the level of the knob on the front door of the grade of a railroad track in its vicinity, but not on the owner's property, for the purpose of abolishing a grade crossing, is not within the operation of a statute providing for the payment of damages caused by laying out, making, and maintaining a railroad, and the liability is not enlarged by a provision that all damages which may be caused by a railroad located in connection with the abolition of a grade crossing shall be paid by the railroad company."

The Court made a distinction between damage in fact and damage in law, where no part of the land is taken, and held that remote and fanciful consequential damages to adjoining property were not recoverable, and said (p. 175):

"The interference with the view from the petitioner's house and estate, which is the sole ground on which damages are sought in the case at bar, seems to us to relate to matters too remote and speculative and are

not sufficiently distinct, separate, special and peculiar to the petitioners to warrant a recovery even under the broad rule established by the statute. They are not different in kind from those suffered by all the public who travel on Mill Street, but only greater in degree. The scar upon a landscape resulting from a high railroad embankment and the consequent intrusion of the business of railroading upon the solitude of hill and mountain may have an appreciably deleterious effect upon a distant estate, whose chief market value may lie in its remoteness and seclusion from evidences of commercialism. It is conceivable that evidence might be proffered tending to show that the intrusion was obnoxious and the effect upon market value was substantial. No decision here or elsewhere, so far as we are aware, ever has gone so far as to hold that damages might be recovered for invasion of purely esthetic elements of value such as these."

In *Eachus v. Los Angeles, &c. Railroad Co.*, 103 Cal. 614, the Court, in considering the provision of the California Constitution that "private property shall not be taken or damaged for public use without just compensation," said (p. 617):

"Damage for which compensation is to be made is a damage to the property itself, and does not include a mere infringement of the owner's personal pleasure or enjoyment. Merely rendering private property less desirable for certain purposes, or even causing personal annoyance or discomfort in its use, will not constitute the damage contemplated by the Constitution; but the property itself must suffer some diminution in substance or be rendered intrinsically less valuable by reason of the public use. The erection of a county jail or a county hospital may impair the comfort or pleasure of the residents in that vicinity, and to that extent render the property less desirable and even less salable; but this is not an injury to the property itself so much as an influence affecting its use for certain purposes."

The respondents did not allege that any easement, express or implied, appertained to their land as against the lands acquired by petitioner, and it is, therefore, unnecessary to consider the state of the law in respect to actual easements for air, light and view, except, in passing, it is to be noted that even express easements for light, air and view do not extend beyond the necessity therefor. Under the facts of this case, even if respondents had an actual easement, there would have been no legal interference therewith, because there was still ample light and air for the enjoyment of the respondents' property and no loss of view of or from their property. There was only a change of view, and, as to light and air, there was just as much, if not more, after the building of the bridge and its approach, as there had been prior thereto. The respondents had no easement and their claim is wholly based upon an alleged newly-created right, undefined and practically unlimited. Such a right, if allowed, would be a great innovation and novelty in the law, and would create a most dangerous precedent for damage claims of all kinds and descriptions, and would be a complete abandonment of the same and fundamental rule that there may be damages without legal injury; that is to say, the principle of *damnum absque injuria*.

So far as the closing, partial closing, and relocation of streets were concerned, the action was by the Town of Phillipsburg, and not by the Bridge Commission. Respondents' claim for damages, if any, resulting therefrom, must be asserted against the Town of Phillipsburg. The main highway upon which respondents' land abutted was not closed wholly or partially, nor was it relocated, and, in the legal sense, there was no curtailment of access to or from respondents' land.

As above pointed out, the "federal common law," under which the Compact is to be construed, adopts the general common law, *Smith v. Alabama*, 124 U. S. 465, and, there-

fore, in construing the Compact between Pennsylvania and New Jersey, both of which are common law states, the sound and safe principles of the general common law should be applied.

The respondents' claim is asserted upon the contention that the Compact created new rights not known to the common law, and, therefore, being in derogation of the common law, the Compact should be strictly construed against the enlargement of the common law principle, because unless the intent is plain and the language clear and unambiguous, such a construction should not be given.

Shaw v. Railroad Co., 101 U. S. 557.

A careful reading of the title, preamble, recitals and body of the Compact fails to bring to light any intention to create new, undefined and unlimited, rights to consequential damages. The definition in the Compact of the term "real property" as including "claims for damage to real estate" is greatly stressed by respondents, but this clearly relates only to that which the Bridge Commission may acquire by purchase or condemnation, and not to claims against the Commission. The Bridge Commission may acquire lands, structures, franchises, an interest in lands, including lands under water and riparian rights, and any and all things and rights usually included within the said term, and includes not only fees simple and absolute, but also any and all lesser interests, such as easements, rights of way, uses, leases, licenses and all other incorporeal hereditaments, and every estate, interest and right, legal or equitable, including terms of years and liens thereon by way of judgments, mortgages or otherwise, and also claims for damage to real estate.

The words "damage to real estate" clearly mean that when the Bridge Commission acquires real property by

purchase or condemnation, it may also acquire claims for damage to real estate existing in favor of the property owners and against third parties. There is nothing in this language that justifies the contention that the Bridge Commission is required to pay damages to property owners whose lands are not taken, and has no reference to claims for damages by property owners against the Bridge Commission.

The respondents also stress certain language in the New Jersey Act of 1912, as amended in 1919 (P. L. 1912, Ch. 297; P. L. 1919, Ch. 76), as follows (Sec. 3):

"The said joint commission having viewed the premises or examined the property shall hear all parties interested and their witnesses, and shall estimate the value of the property taken, including any easement, rights or franchises incident thereto, as well as the damages for property taken, injured or destroyed, and shall state to whom the damages are payable."

As will be hereafter set forth under the succeeding point, the reference in the Compact to the 1912 Act, as amended by the 1919 Act, is for the purpose of providing a specific method of eminent domain procedure, but, under the present point, it should suffice to say that even though the 1912 Act, as amended by the 1919 Act, were wholly incorporated into the Compact, there would still be no legal foundation therein for respondents' claim, because the 1912 Act, as amended by the 1919 Act, only provided for the acquisition of existing toll bridges and the turning of the same into free bridges, and did not contemplate nor provide for the construction of new bridges. It is apparent that the words "damages for property injured" were intended to apply to actual legal rights that were destroyed by the condemnation of an existing toll bridge and the turning of the same into a free bridge. There was nothing in the 1912 Act, as amended, to indicate

a legislative intent to create new, undefined and unlimited rights to damages beyond recognized existing common law rights to damages for property injured.

Applying all of the foregoing to the question of the construction of the Compact, it is submitted that the true legal meaning and application thereof precludes respondents' claim, and that there should be a reversal of the judgment of the New Jersey Court of Errors and Appeals, which construed the Compact as giving respondents a right to consequential damages.

Point II.

Reference in the Compact to the New Jersey Act of 1912, as amended, provided only a specific eminent domain method, and gave no right to consequential damages.

In 1912 the New Jersey Legislature passed an Act (P. L. 1912, Ch. 297), which provided for the appointment of a Commission of three members, and made an initial appropriation to purchase toll bridges across the Delaware River. It was subject to Pennsylvania's concurrence, which did not take place until 1917 (Act No. 406, P. L. 1184). Joint action under these statutes related solely to the acquisition of existing toll bridges and the conversion thereof into free bridges. The New Jersey 1919 amendment (P. L. 1919, Ch. 76) authorized the members of the Bridge Commission to sit as condemnation commissioners.

The Compact in question resulted from a Pennsylvania Statute of 1931 (Act No. 332, P. L. 1352), as amended by an Act of 1933 (Act No. 138, P. L. 1827), and the 1934 New Jersey Statute (P. L. 1934, Ch. 215). The Compact was signed by the respective Governors in December, 1934, and was assented to by Congress in 1935, such assent being

a requisite to its validity under Article I, Section X (2) of the Federal Constitution.

The Compact authorized the building of new toll bridges, later to become free bridges. The Compact, by Article II, Sub-division (o), gave the Bridge Commission the same powers which the former joint commission had with respect to the acquisition of existing toll bridges. The Bridge Commission was given the power of eminent domain by Article II, Sub-division (m).

Article III of the Compact provided:

“If the Commission is unable to agree with the owner or owners thereof upon terms for the acquisition of any such real property in the State of New Jersey for any reason whatsoever, then the Commission may acquire such property by the exercise of the right of eminent domain in the *manner* provided by the Act of the State of New Jersey entitled ‘An Act authorizing the acquisition and maintaining by the State of New Jersey in conjunction with the State of Pennsylvania of toll bridges across the Delaware River, and providing for free travel across the same’ approved the first day of April, 1912 (Chapter 297) and the various acts amendatory thereof and supplementary thereto relating to the acquisition of interstate toll bridges over the Delaware River.”

The New Jersey 1912 Act, as amended by the 1919 Act, therefore, is referred to in the Compact only for the purpose of providing specific eminent domain procedure. There is nothing in the Compact to indicate or even suggest that the New Jersey 1912 Act, as amended, was incorporated in the Compact by reference, for any purpose other than to provide a *method or manner* of procedure, and certainly there was no intent to enlarge the effect of the 1912 Act, as amended, so as to provide for consequential damages to adjoining property owners, for injuries from

the construction of new bridges. In its widest application, the New Jersey 1912 Act related only to the acquisition of existing bridges, and whether the Act be incorporated entirely into the Compact, or merely to provide a method of procedure, the result is the same, and no legal foundation for respondents' claim can be found in either the 1934 Compact or the 1912 Act, as amended.

It is submitted that the Court below was in error in giving an unauthorized meaning and application to the New Jersey 1912 Act, as amended, as incorporated by reference in the Compact and, therefore, there should be a reversal of the judgment of the New Jersey Court of Errors and Appeals.

Conclusion.

For the foregoing reasons, it is respectfully submitted that the judgment of the New Jersey Court of Errors and Appeals should be reversed, with a direction to dismiss the mandamus suit.

JOHN H. PURSEL,
Attorney for Petitioner.

EDWARD P. STOUT,
Counsel for Petitioner.

APPENDIX.

AGREEMENT BETWEEN THE COMMON- WEALTH OF PENNSYLVANIA AND THE STATE OF NEW JERSEY

Creating the Delaware River Joint Toll Bridge Com- mission as a body corporate and politic and defining its powers and duties

Whereas, The commission, on behalf of the Commonwealth of Pennsylvania, existing by virtue of the act, approved the eighth day of May, one thousand nine hundred and nineteen (Pamphlet Laws, one hundred forty-eight), and its supplements and amendments, and the commission, on behalf of the State of New Jersey, existing by virtue of the provisions of the act, approved the first day of April, one thousand nine hundred and twelve (Chapter, two hundred ninety-seven), and its supplements and amendments, acting as a joint commission, have acquired various toll bridges over the Delaware River between the Commonwealth of Pennsylvania and the State of New Jersey; and

Whereas, Additional bridge facilities between the two States will be required in the future for the accommodation of the public and the development of both States; and

Whereas, Such additional bridge facilities should be developed without the expenditure of large sums from the public revenues; and

Whereas, It is highly desirable that there be a single agency for both States empowered to further the transportation interests of these States with respect to that part of the Delaware River north of the stone arch bridge of the Pennsylvania Railroad from Morrisville to Trenton; now therefore,

The Commonwealth of Pennsylvania and the State of New Jersey do hereby solemnly covenant and agree, each with the other, as follows:

ARTICLE I.

There is hereby created a body corporate and politic to be known as the Delaware River Joint Toll Bridge Commission (hereinafter in this agreement called the "Commission"), which shall consist of the commissioners, on behalf of the Commonwealth of Pennsylvania, provided for by the act, approved the eighth day of May, one thousand nine hundred and nineteen (Pamphlet Laws, one hundred forty-eight), and its supplements and amendments, for the acquisition of toll bridges over the Delaware River, and of commissioners, on behalf of the State of New Jersey, provided for by the act, approved the first day of April, one thousand nine hundred and twelve (Chapter, two hundred ninety-seven), and its supplements and amendments, for the acquisition of toll bridges over the Delaware River, which said commissions have heretofore been acting as a joint commission by virtue of reciprocal legislation.

No action of the commission shall be binding unless a majority of the members of the commission from Pennsylvania and a majority of the members of the commission from New Jersey shall vote in favor thereof.

The commission shall constitute the public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey for the following public purposes, and shall be deemed to be exercising an essential governmental function in effectuating such purpose, to wit:

(a) The administration, operation, and maintenance of the joint State-owned bridges across the Delaware River between the Commonwealth of Pennsylvania and the State of New Jersey, and located north of the present stone arch bridge of the Pennsylvania Railroad across the Delaware River from Morrisville to Trenton;

(b) The investigation of the necessity for additional bridge communications over the Delaware River north of the said railroad bridge, and the making of such studies, surveys, and estimates as may be necessary to determine the feasibility and cost of such additional bridge communications;

(c) The preparation of plans and specifications for, and location, construction, administration, operation and maintenance of, such additional bridge communications over the Delaware River, north of the aforesaid railroad bridge, as the commission deems necessary to advance the interests of the two States and to facilitate public travel; and the issuance of bonds and obligations to provide moneys sufficient for the construction of such bridges; and the collection of tolls, rentals, and charges for the redemption of such bonds and obligations, and the payment of interest thereon;

(d) The procurement from the Government of the United States of any consents which may be requisite to enable any project within its powers to be carried out.

ARTICLE II.

For the effectuation of its authorized purposes, the commission is hereby granted the following powers:

(a) To have perpetual succession.

(b) To sue and be sued.

(c) To adopt and use an official seal.

(d) To elect a chairman, vice-chairman, secretary and treasurer, and appoint an engineer. The secretary, treasurer, and engineer need not be members of the commission.

(e) To adopt suitable by-laws for the management of its affairs.

(f) To appoint such other officers, agents and employes as it may require for the performance of its duties.

(g) To determine the qualifications and duties of its appointees, and to fix their compensation.

(h) To enter into contracts.

(i) To acquire, own, hire, use, operate, and dispose of personal property.

(j) To acquire, own, use, lease, operate, and dispose of real property and interest in real property, and to make improvements thereon.

(k) To grant the use of, by franchise, lease, and otherwise, and to make and collect charges for the use of, any property or facility owned or controlled by it.

(l) To borrow money upon its bonds or other obligations, either with or without security.

(m) To exercise the power of eminent domain.

(n) To determine the exact location, system, and character of, and all other matters in connection with, any and all improvements or facilities which it may be authorized to own, construct, establish, effectuate, maintain, operate or control.

(o) In addition to the foregoing powers, to exercise the powers, duties, authority and jurisdiction heretofore conferred and imposed upon the aforesaid commissions, hereby constituted a joint commission by reciprocal legislation of the Commonwealth of Pennsylvania and the State of New Jersey, with respect to the acquisition of toll bridges over the Delaware River, the management, operation and maintenance of such bridges, and the location, construction, operation and maintenance of additional bridge communications over the Delaware River north of the aforesaid railroad bridge of the Pennsylvania Railroad.

(p) To exercise all other powers, not inconsistent with the Constitutions of the State of Pennsylvania and New Jersey or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, except the power to levy taxes or assessments for benefits; and generally to exercise, in connection with its property and affairs and in connection with property under its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.

ARTICLE III.

If for any of its authorized purposes (including temporary purposes), the commission shall find it necessary or convenient to acquire for public use any real property in the Commonwealth of Pennsylvania or the State of New Jersey, whether for immediate or future use, the commission may, by resolution, determine to acquire such property by a fee simple absolute or a lesser interest, and the said determination shall not be affected by the fact that such property has theretofore been taken for or is then devoted to a public use, but the public use in the hands or under the control of the commission shall be deemed superior to the public use in the hands or under the control of any other person, association, or corporation.

If the commission is unable to agree with the owner or owners thereof upon terms for the acquisition of any such real property, in the Commonwealth of Pennsylvania, for any reason whatsoever, then the commission may acquire such real property by the exercise of the right of eminent domain, in the manner provided by the act, approved the eighth day of May, one thousand nine hundred and nineteen (Pamphlet Laws, one hundred forty-eight), entitled

"An act providing for the joint acquisition and maintenance by the Commonwealth of Pennsylvania and the State of New Jersey of certain toll bridges over the Delaware River," and the acts amendatory thereof and supplementary thereto, relating to the acquisition of inter-State toll bridges over the Delaware River.

If the commission is unable to agree with the owner or owners thereof upon terms for the acquisition of any such real property, in the State of New Jersey, for any reason whatsoever, then the commission may acquire such property by the exercise of the right of eminent domain, in the manner provided by the act of the State of New Jersey, entitled "An act authorizing the acquisition and maintaining by the State of New Jersey, in conjunction with the State of Pennsylvania, of toll bridges across the Delaware River; and providing for free travel across the same," approved the first day of April, one thousand nine hundred and twelve (Chapter, two hundred ninety-seven), and the various acts amendatory thereof and supplementary thereto, relating to the acquisition of inter-State toll bridges over the Delaware River.

The power of the commission to acquire real property by condemnation or, the exercise of the power of eminent domain in the Commonwealth of Pennsylvania and the State of New Jersey shall be a continuing power and no exercise thereof shall be deemed to exhaust it.

The commission and its duly authorized agents and employes may enter upon any land, in the Commonwealth or the State of New Jersey, for the purpose of making such surveys, maps, or other examinations thereof, as it may deem necessary or convenient for its authorized purposes.

However, anything to the contrary contained in this compact notwithstanding, no property, now or hereafter vested in or held by any county, city, borough, village, township or other municipality, shall be taken by the commission with-

out the consent of such municipality, unless expressly authorized so to do by the Commonwealth or State in which such municipality is located. All counties, cities, boroughs, villages, townships and other municipalities, and all public agencies and commissions of the Commonwealth of Pennsylvania and the State of New Jersey, notwithstanding any contrary provision of law, are hereby authorized and empowered to grant and convey to the commission upon its request, but not otherwise, upon reasonable terms and conditions, any real property which may be necessary or convenient to the effectuation of its authorized purposes, including real property already devoted to public use.

The Commonwealth of Pennsylvania and the State of New Jersey hereby consent to the use and occupation by the commission of any real property of the said two States, or of either of them, which may be or become necessary or convenient to the effectuation of the authorized purposes of the commission, including lands lying under water and lands already devoted to public use.

The term "real property," as used in this compact, includes lands, structures, franchises, and interests in land, including lands under water and riparian rights, and any and all things and rights usually included within the said term, and includes not only fees simple and absolute but also any and all lesser interests, such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments, and every estate, interest or right, legal or equitable, including terms of years and liens thereon by way of judgments, mortgages, or otherwise, and also claims for damage to real estate.

ARTICLE IV.

Notwithstanding any provision of this agreement, the commission shall have no power to pledge the credit of the Commonwealth of Pennsylvania, or of the State of New

Jersey, or of any county, city, borough, village, township and other municipality of said Commonwealth or State, or to create any debt against said Commonwealth or State or any such municipality.

ARTICLE V.

The commission is hereby authorized to make and enforce such rules and regulations, and to establish, levy and collect (or to authorize, by contract, franchise, liens or otherwise, the establishment, levying and collection of) such tolls, rates, rents, and other charges, in connection with any such bridge across the Delaware River which it may hereafter construct and operate, as it may deem necessary, proper, desirable and reasonable, which tolls, rates, rents, and other charges shall be at least sufficient to meet interest and sinking fund charges on bonds and obligations issued by the commission, the maintenance of such bridge, and the administrative expenses of the commission properly chargeable to such bridge. The commission is hereby authorized and empowered to pledge such tolls, rates, rents, and other revenues, or any part thereof, as security for the repayment, with interest, of any moneys borrowed by it or advanced to it for any of its authorized purposes, and as security for the satisfaction of any other obligation assumed by it in connection with such loans or advances.

ARTICLE VI.

The Commonwealth of Pennsylvania and the State of New Jersey hereby covenant and agree with each other and with the holders of any bonds or other obligations of the commission, for which tolls, rents, rates, or other revenues have been pledged, that, so long as any of said bonds or obligations remain outstanding and unpaid (unless adequate provision is otherwise made by law for the protection of those advancing moneys upon such bonds or obligations),

the Commonwealth of Pennsylvania and the State of New Jersey will not diminish or impair the power of the commission to own, operate and control said properties and facilities, or to establish, levy and collect tolls, rents, rates, and other charges in connection with such properties and facilities.

The Commonwealth of Pennsylvania and the State of New Jersey hereby covenant and agree with each other and with the holders of any bonds or obligations of the commission, for which tolls, rents, rates, or other revenues shall have been pledged, that the said Commonwealth and State will not authorize or permit the construction, operation and maintenance of any additional bridge or tunnel for the transportation of passengers by vehicles over the Delaware River by any other person or body, than the commission, within a distance of ten miles in either direction from any such toll bridge, measured along the boundary line between the said Commonwealth and the said State.

ARTICLE VII.

The bonds or obligations which may be issued by the commission for any of its authorized purposes, and as security for which tolls, rents, rates, and other revenues shall have been pledged, are hereby made securities in which all State and municipal officers and bodies of the Commonwealth of Pennsylvania and the State of New Jersey, and all banks, bankers, trust companies, savings banks, savings and loan associations, investment companies, and other persons carrying on a banking business, or insurance companies, insurance associations, and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees, and other fiduciaries, and all other persons whatsoever, who now or may hereafter be authorized to invest in bonds or other obligations of the Commonwealth of Pennsylvania or of the State of New Jersey, may prop-

erly and legally invest funds, including capital belonging to them or within their control; and said bonds or other obligations are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer, or agency of the Commonwealth of Pennsylvania and the State of New Jersey, for any purpose for which the deposit of bonds or other obligations, either of the Commonwealth or of the State, is now or may hereafter be authorized.

ARTICLE VIII.

The effectuation of its authorized purposes by the commission is and will be in all respects for the benefit of the people of the Commonwealth of Pennsylvania and the State of New Jersey, and for the increase of their commerce and prosperity, and since the commission will be performing essential governmental functions in effectuating said purposes, the commission shall not be required to pay any taxes or assessments upon any property acquired or used by it for purposes authorized by this agreement; and the bonds or obligations issued by the commission, their transfer and the income therefrom, including any profits made on the sale thereof, shall, at all times, be free from taxation within the Commonwealth of Pennsylvania and the State of New Jersey.

ARTICLE IX.

The commission shall make annual reports to the Governors and Legislatures of the Commonwealth of Pennsylvania and the State of New Jersey, setting forth in detail its operations and transactions, and may make such additional reports, from time to time, to the Governors and Legislatures as it may deem advisable.

Whenever the commission, after investigation and study, shall have concluded plans, with estimates of cost, and

means of financing any new toll bridge across the Delaware River, as hereinbefore provided, it shall make to the Legislatures of each State, at the next sessions thereof, a detailed report, dealing with the contemplated project; but such project may, nevertheless, be proceeded with if the Legislatures of said States, or either of them, are not in session.

ARTICLE X.

Whenever particular bonds issued for any bridge or bridges, and the interest thereon, shall have been paid, or a sufficient amount shall have been provided for their payment and shall continue to be held for that purpose, the commission shall cease to charge tolls for the use of such bridge and thereafter such bridge shall be a free bridge, and shall thereafter be maintained equally at the cost of the Commonwealth of Pennsylvania and the State of New Jersey by appropriations made for such purposes, as now provided by law for the maintenance of bridges over the Delaware River acquired by the Commonwealth of Pennsylvania and the State of New Jersey.

In Witness Whereof, This Eighteenth day of December, A. D. 1934, A. Harry Moore, has affixed his signature hereto as Governor of the State of New Jersey and caused the great seal of the State to be attached thereto.

A. HARRY MOORE,

Governor, State of New Jersey.

[SEAL]

And, on this Nineteenth day of December, A. D. 1934, Gifford Pinchot, has affixed his signature hereto as Governor of the Commonwealth of Pennsylvania and caused the great seal of the Commonwealth to be attached thereto.

GIFFORD PINCHOT,

Governor, Commonwealth of Pennsylvania.

[SEAL]

NEW JERSEY STATUTE OF 1912**CHAPTER 297**

AN ACT authorizing the acquisition and maintaining by the State of New Jersey, in conjunction with the State of Pennsylvania, of toll bridges across the Delaware river, and providing for free travel across the same.

WHEREAS, Toll bridges have been constructed and are now maintained at various places across the Delaware river between the State of New Jersey on one side and the State of Pennsylvania on the other by companies incorporated under and by virtue of the laws of the States of New Jersey and Pennsylvania, which toll bridges are necessary for the accommodation of the public, the carrying on of business and for social intercourse; and

WHEREAS, By reason of the constant increase in the population in the border counties of said States and the constant increase in traffic upon and across said bridges, the payment of toll has become a serious burden and tax upon the people of both said States, and operates to their detriment; therefore

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Three persons shall be appointed by the Governor to be constituted a commission together with a like board or commission from the State of Pennsylvania to acquire the rights, franchises and property of the several bridge companies owning and operating toll bridges across said Delaware river between the State of New Jersey and the State of Pennsylvania, except such as are owned by steam or electric railways or railroads and used for railway or rail-

road purposes, such acquisition to be either by purchase or to be had and effected by the State of New Jersey under and by virtue of its rights of eminent domain as set forth in sections two and three of this act. The State of New Jersey to pay one-half of the cost of said properties and one-half the cost of acquiring the same, the other half to be paid by the State of Pennsylvania.

2. In case the compensation accruing from such appropriation has not been agreed upon the Court of Common Pleas of the county in which the bridges, or any of them so taken shall be situated, or any law judge thereof in vacation, without any bond being required to be filed, on application thereto, by the Attorney-General of the State, or any corporation, stock company, partnership or persons interested, shall appoint three discreet and disinterested freeholders as viewers, and appoint a time not less than twenty nor more than thirty days therefrom, when said viewers shall meet upon the property and view the same, and the premises affected thereby; the said viewers shall give at least ten days' personal notice of the time and place of the first meeting to the Attorney-General, and to the president, secretary or director of any corporation stock company or partnership affected, if any of the aforesaid officers reside in the county in which said bridges are located, otherwise by advertisement for three consecutive weeks in two newspapers published in said county, and by hand-bills posted upon the premises or by such notice as the court shall direct.

3. The said viewers having been duly sworn or affirmed faithfully, justly and impartially, to decide and true report to make concerning the value of the property and franchises so taken, which shall be submitted to them and in relation to which they are authorized to inquire under the provisions of this act, and having viewed the premises or examined

the property, shall hear all parties interested, and their witnesses, and shall estimate the damages for property taken, injured or destroyed with all the rights and franchises appertaining to the same, and to whom the damages are payable. They shall give at least ten days' notice thereof, in the manner herein provided to the Attorney-General and to all parties interested of the time and place when said viewers will meet and exhibit said report and hear all exceptions thereto.

4. After making whatever changes are deemed necessary the said viewers shall make a report to the court showing the damages, and file therewith a plan showing the location of said bridge or bridges so taken, and the names of the corporation stock company, partnership or persons to whom such damages are payable.

5. Upon the report of said viewers, or any two of them, being filed in said court, either the State of New Jersey, the corporation stock company, partnership or persons owning said bridge or bridges, or any party interested may, within thirty days thereafter, file exceptions to the same, and the court shall have power to confirm said report or to modify, change or otherwise correct the same, or refer the same back to the same or new viewers with like power as to their report, or within thirty days from the filing of any report in court or the final action of the court upon the exceptions of any corporation whose property is taken, or the State of New Jersey may appeal and demand a trial by jury, and any corporation stock company, partnership, person or party interested therein, or the State of New Jersey may, within thirty days after final decree, take an appeal to the Supreme Court. If no exceptions are filed and demands made for trial by jury within the said thirty days after the filing of said report, the same shall become absolute.

6. The said Court of Common Pleas shall have power to order what notices shall be given in connection with any part of said proceedings and may make all such orders as it may deem requisite.

7. The costs of the viewers and all court costs, including advertisements incurred in the proceedings aforesaid, shall be defrayed by the State of New Jersey, and each of the said viewers shall be entitled to a sum not exceeding five dollars a day for every day necessarily employed in the performance of the duties herein prescribed.

8. Upon and immediately after the enactment of the concurrent legislation by the State of Pennsylvania, said bridges shall become the sole property of the said States of New Jersey and Pennsylvania in proportion aforesaid, and the toll charges thereon shall cease and said bridges shall be free to the traveling public under such rules and regulations as may be prescribed by the said States; provided, that if the said commission and the corporation stock company, partnership or person owning any of the said bridges fail to come to an agreement as to the compensation for the taking of the same within sixty days of the enactment of said concurrent legislation, the jury of view shall be appointed as aforesaid and damages assessed as of the date upon which the collection of tolls ceased, with interest thereon during the time an appeal from the assessment thereof is pending; and provided further, that any steam or passenger railroad or railway now having in use and occupation any such toll bridge under a lease or agreement with any corporation stock company, partnership or person owning said bridge, shall pay to the States of New Jersey and Pennsylvania the same rental, interest and charges and in the same manner and proportions as they now pay to the said bridge corporation or corporation companies or owners as aforesaid.

9. All bridge properties or interests therein acquired by the States of New Jersey and Pennsylvania in the manner and form above prescribed, and all damages and costs arising from the taking of the same as aforesaid, shall be paid by the two States to the corporation stock companies, partnership or persons as their interests may appear in equal proportions as the interests of said States may appear.

10. Upon the acquisition as aforesaid by the State of New Jersey jointly with the State of Pennsylvania according as such bridges have a terminus in the said States, respectively, of the bridge properties as hereinbefore provided, such bridges shall be and remain in the charge and custody of any board or official that the respective Governors of said States may designate and such bridges and the immediate approaches thereto shall be maintained jointly by said State of New Jersey and said State of Pennsylvania in which each of these bridges has its terminus in equal proportions, and shall be kept in constant repair and rebuilt when destroyed, and the expenses incident to the maintenance of said bridge property in the charge and custody of said board shall be borne equally by said States; *provided*, that appropriate concurrent legislation for the same purpose be enacted by the State of Pennsylvania.

11. Not more than five hundred thousand dollars shall be paid by the State of New Jersey for and on account of its portion or share for the purchase or condemnation of said bridges; *provided*, that not more than one hundred thousand dollars thereof shall be expended for the said purpose each year, and the aforesaid amount or so much thereof as may be necessary is hereby specifically appropriated in the proportions aforesaid out of any moneys in the treasury not otherwise appropriated.

Approved April 1, 1912.

NEW JERSEY STATUTE OF 1919**CHAPTER 76**

AN ACT to amend an act entitled "An act authorizing the acquisition and maintaining by the State of New Jersey, in conjunction with the State of Pennsylvania, of toll bridges across the Delaware river, and providing for free travel across the same," approved April first, one thousand nine hundred and twelve.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section one of the act of which this act is amendatory, as said section was amended by act approved March seven-teenth, one thousand nine hundred and sixteen, be and the same is hereby amended so that it shall read as follows:

1. Three persons shall be appointed by the Governor to be constituted a commission, together with a like board or commission from the State of Pennsylvania, to acquire said toll bridges crossing the Delaware river, and the rights, franchises and property including the immediate approaches thereto, of the several bridge companies, corporations, stock companies, partnerships or persons owning and operating the bridges between the State of New Jersey and the State of Pennsylvania, except such as are owned by steam or electric railways or railroads and used exclusively for railway or railroad purposes, such acquisition to be either by purchase or to be had and effected by the State of New Jersey under and by virtue of its rights of eminent domain as set forth in this act. The State of New Jersey to pay one-half of the cost of said properties and one-half the cost of acquiring the same, the other half to be paid by the State of Pennsylvania, including the allowance for the

then present value of the franchise or right to operate any such bridge. The commission of the State of New Jersey, constituted as in this act provided, and such commission as may be provided in any act or acts of the commonwealth of Pennsylvania, providing for the joint acquisition and maintenance by the commonwealth of Pennsylvania and the State of New Jersey of certain toll bridges over the Delaware river shall act to acquire by purchase or by condemnation proceedings as said joint commission may deem expedient, and according to and as in the enactments of the respective States is provided, and the joint commission shall sit as may be deemed expedient in order to determine the cost of the properties, including the franchise incident thereto situated in the State of New Jersey and the commonwealth of Pennsylvania, to determine any compensation to be allowed as of the time of entry upon the property and taking possession thereof, for the value of property, franchises, easements or rights in the two States, said franchise to be estimated on its present value as incident to such property and not upon estimated future receipts from toll charges.

2. Section two of the act of which this act is amendatory be and same is hereby amended so that it shall read as follows:

2. In case the compensation accruing from such appropriation shall not be agreed upon the joint commission acting in Pennsylvania and New Jersey, having given at least sixty days' notice to the owners of the lands and parties in interest of its intention so to do, shall enter upon and take possession of said lands in the name of the State of New Jersey, and such entry and possession shall entitle the joint commission to the exclusive use and right of possession of such property for the purposes set forth in this act. The said commission shall appoint a time not less than

twenty nor more than thirty days therefrom, when they shall meet upon the property and view the same, and the premises affected thereby; and shall give at least ten days' personal notice of the time and place of the first meeting to the Attorney-General of this State, and to the president, secretary or director of any corporation, stock company or to any partnership or persons affected, if any of the aforesaid officers or persons reside in this State, otherwise by advertisement for two consecutive weeks in two newspapers published in the county in which said bridge is located, and by handbills posted upon the premises.

3. Section three of the act of which this act is amendatory be and the same is hereby amended so that it shall read as follows:

3. The said joint commission having viewed the premises or examined the property, shall hear all parties interested, and their witnesses, and shall estimate the value of the property taken, including any easement, rights or franchises incident thereto, as well as the damages for property taken, injured or destroyed, and shall state to whom the damages are payable. They shall file in the office of the clerk of the county in which the land or other property is situated, to remain of record therein, a report thereof, in writing, under the hands of said joint commission or a majority of them, within ten days thereafter, together with a plan showing the location of said bridge or bridges so taken, and the names of the corporation, stock company, partnership or persons to whom such compensation or damages are payable. Within ten days after the filing of said report personal notice shall be given to the owners and parties in interest, if resident in this State, and if not, by advertisement in a newspaper of general circulation in the county in which said bridge is located, of the filing of said report.

4. Section four of the act of which this act is amendatory be and the same is hereby repealed.

5. Section five of the act of which this act is amendatory be and the same is hereby amended so that it shall read as follows:

5. Upon the filing of said report or at any time within thirty days thereafter, any party aggrieved may take an appeal therefrom in the manner provided for taking appeals from the award of compensation by commissioners appointed for that purpose under the provisions of "An act to regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of 1900)," and except as to the application to a justice of the Supreme Court for the appointment of commissioners as viewers, which is otherwise provided for in this act, all proceedings therein shall be conducted in accordance with the provisions of said revision, and the final compensation awarded, which shall be taken to include all moneys payable for the acquisition of said property, and all rights, franchises and easements incident thereto, when paid to the proper parties, or into the Court of Chancery, or tendered to the proper parties in interest, shall vest the title in fee to said properties in the State of New Jersey. The sum of the total final awards of compensation and all court costs in both States, including advertisements, incurred in the proceedings aforesaid, shall be defrayed by the respective States in equal portions, that is to say, one-half of the total expense shall be paid by each State, including the expenses of the commission.

6. Section six of the act of which this act is amendatory be and the same is hereby repealed.

7. Section seven of the act of which this act is amendatory be and the same is hereby repealed.

8. Section eight of the act of which this act is amendatory be and the same is hereby amended so that the same shall read as follows:

8. Immediately upon the acquisition and entry and taking possession of said bridge properties by the joint commission the toll charges thereon shall cease and said bridges shall be free to the traveling public under such laws of the respective States and rules and regulations of the joint commission as may be prescribed. Any steam or passenger railroad or railway now having in use and occupation any such toll bridge under a lease or agreement with any corporation, stock company, partnership or person owning said bridge shall pay to the joint commission for the respective uses of the States of New Jersey and Pennsylvania the rental, interest and charges in the same manner and proportions as they now pay to the said bridge corporation or corporation companies or owners as aforesaid, subject, however, to such change of charges or rentals as shall be made by said joint commission or its successors, subject to the approval of the Public Utility Commission, or other duly authorized and constituted body or bodies in the respective States.

9. Section ten of the act of which this act is amendatory be and the same is hereby amended so that it shall read as follows:

10. Upon the acquisition as aforesaid by the State of New Jersey jointly with the State of Pennsylvania according as such bridges have a terminus in the said States, respectively, of the bridge properties as hereinbefore provided, such bridges shall be and remain in the charge and

custody of any board or official that the respective Governors of said States may designate, and such bridges and the immediate approaches thereto shall be maintained jointly by said State of New Jersey and said State of Pennsylvania in which each of these bridges has its terminus in equal proportions, and shall be maintained and kept in constant repair and the expenses incident to the maintenance of said bridge property in the charge and custody of said board shall be borne equally by said States; *provided*, that appropriate concurrent legislation for the same purpose be enacted by the State of Pennsylvania.

10. This act shall take effect immediately.

Approved April 10, 1919.

NEW JERSEY STATUTE OF 1934

CHAPTER 215

AN ACT providing for joint action by the State of New Jersey and the Commonwealth of Pennsylvania in the administration, operation and maintenance of bridges over the Delaware river, and for the construction of additional bridge facilities across said river; authorizing the Governor, for these purposes, to enter into an agreement with the Commonwealth of Pennsylvania; creating a Delaware River Joint Toll Bridge Commission and specifying the powers and duties thereof, including the power to finance the construction of additional bridges by the issuance of revenue bonds to be redeemed from revenues derived from tolls collected at such bridges; transferring to said commission all powers now exercised by existing commission created to acquire toll bridges over the Delaware river; and making an appropriation.

• **BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

1. The Governor is hereby authorized to enter into a compact or agreement on behalf of the State of New Jersey with the Commonwealth of Pennsylvania in substantially the following form:

(Copy of authorized Compact or Agreement omitted here because Compact as executed by both States is printed herein at p. 25.)

ARTICLE XI

Upon its signature on behalf of the State of New Jersey and the Commonwealth of Pennsylvania, this compact or agreement shall become binding and shall have the force and

effect of a statute of the State of New Jersey, and the commission shall thereupon become vested with all the powers, rights, and privileges, and be subject to the duties and obligations contained therein, as though the same were specifically authorized and imposed by statute, and the State of New Jersey shall be bound by all of the obligations assumed by it under this compact or agreement; and the Governor shall transmit an original signed copy thereof to the Secretary of State for filing in his office.

The Governor is hereby authorized to apply, on behalf of the State of New Jersey, to the Congress of the United States for its consent and approval to this compact or agreement; but in the absence of such consent and approval, the commission shall have all of the powers which the State of New Jersey and the Commonwealth of Pennsylvania may confer upon it without the consent and approval of Congress.

ARTICLE XII

2. The sum of twenty thousand dollars (\$20,000.00), or so much thereof as may be necessary, is hereby specifically appropriated to the Delaware River Joint Toll Bridge Commission, to be used by it, together with a like appropriation made by the Commonwealth of Pennsylvania, for the purposes of carrying out the provisions of this compact, except the operation, maintenance, improvement or construction of any new toll bridge over the Delaware river. The appropriation herein made to be taken from the funds of the Commission on Elimination of Toll Bridges, and to be returned to that commission within five years after the completion of the first toll bridge constructed, with interest at the rate paid on the bonds issued for the construction of that particular bridge. The moneys herein appropriated shall be disbursed upon requisition of the chairman of the

commission presented to the Comptroller, and paid by the State Treasurer in the usual manner.

3. This act shall become effective immediately upon its signing by the Governor and the passage by the Commonwealth of Pennsylvania of a substantially similar act, embodying the agreement between the two States herein set forth, and making a like appropriation.

4. It is the intention of the Legislature of New Jersey that this act shall in no wise authorize tolls to be collected on bridges crossing the Delaware river now free bridges.

Approved June 11, 1934.